

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
Quendall Terminals, a Joint Venture,))
comprised of Altino Properties, Inc,))
a Washington corporation, and))
J. H. Baxter & Co., a California))
corporation, et al.))

AGREED ORDER
No. DE 92TC-N335

TO: Quendall Terminals %

Nicholas Poletika
J.H. Baxter & Co.
1700 South El Camino Real
P.O. Box 5902
San Mateo, CA 94402-0902

Alex Cugini
Altino Properties, Inc.
P.O. Box 359
Renton, WA 98055

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

II.

Findings of Fact

The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by Quendall Terminals.

1. The 25-acre "Quendall Terminals" (the "site") is located at 4503 Lake Washington Boulevard in Renton, Washington along the southeast shore of Lake Washington and is legally described as:

That portion of Government Lot 5 in section 29, Township 24 North, Range 5 East, W.M. and shoreland adjoining lying westerly of the Northern Pacific Railroad right of way and southerly of a line described as follows:

Beginning at the quarter corner on the south line of said Section 29; thence north 89°58'36" west along the south line of said Lot 5 1,113.01 feet to the westerly line of said Northern Pacific Railroad right of way; thence north 29°44'54" each 849.62 feet along said right of way line to a point hereinafter referred to as Point A; thence continuing North 29°44'54" east 200.01 feet to the true point of beginning of the line herein described; thence south

56'28'50" west 222.32 feet to a point which bears north 59'24'56" west 100.01 feet from said Point A; thence north 59'24'56" west to the inner harbor line and the end of said line description; Also that portion of said Government Lot 5 lying southeasterly of Lake Washington Boulevard, westerly of Secondary State Highway Number 2A and northwesterly of the right of way of Public State Highway Number 1 as established by Deed recorded under Auditor's File No. 5687408.

2. The Quendall Terminals Site was part of a homestead that was patented in 1874 to Jeremiah D. Sullivan. This homestead was conveyed to James Coleman by Deed in 1876. While several conveyances were attempted, because of foreclosures, the Site remained in the Coleman family until conveyed to Peter C. Reilly by Deed on March 23, 1916. Peter C. Reilly's interest passed on to Reilly Tar & Chemical, Inc., an Indiana corporation. From 1916 until 1971, the Site was under the ownership of the Reilly family or entities controlled by the Reilly family.

3. Quendall Terminals is a joint venture comprised of Altino Properties, Inc., a Washington Corporation, and J.H. Baxter & Co., a California Corporation. Quendall Terminals acquired the Site by real estate contract in 1971, which was paid in full and the purchase completed and the real property interest conveyed by Warrant Deed in 1975. The instruments of conveyance include a Real Estate Contract, Supplemental Agreement, and Statutory Warranty Deed.

4. Before Lake Washington was lowered in 1916, the upland portion of the Site was occupied by a shingle mill. Subsequently, the Quendall Terminals Site was developed for creosote manufacturing by Republic Creosote in 1916. Republic Creosote, which became Reilly Tar and Chemical, initially operated a small, coal tar creosote manufacturing facility from 1916, at the earliest, to approximately 1969. The creosote manufacturing facilities were gradually expanded over time to the largest area extent in the 1950's. Following 40

years of expansion, the facility went into gradual decline until closure in 1969.

5. Coal tar creosote was manufactured at Quendall Terminals by a destructive distillation process using coal tar as a raw material. Coal tar was routinely purchased from the Seattle Gas Company, located on Lake Union, and shipped to Reilly Tar and Chemical. The coal tar was pumped through a transfer line at the end of the former receiving pipe dock to storage tanks on the Site.

6. During the handling of the material and the finished product, material and finished product were released to ground water, soils, and sediments on the Site. These releases occurred throughout the operational life of the creosote manufacturing facility. Similarly, sludge and scale from the distillation process were routinely disposed of on Site.

7. Once coal tar was processed into creosote, the creosote was stored in tankage until shipment either by rail or by ship. A large portion of the non-creosote material, "heavy-ends", was also sold as paving and waterproofing tar. However, Reilly Tar and Chemical did not track the disposition of low-value by products. Therefore, an accounting of these materials was not maintained.

8. Since 1969, the Quendall Terminals Site has been operated commercially as a log-decking operation and as a storage facility for used oil and fuel oil. As a log-decking facility, no chemical usage occurred at the Site. Used oil and fuel oil storage occurred during the years 1969 to 1978 in those existing tanks that remained on the Site after the shutdown of creosote manufacturing by Reilly Tar and Chemical. There is evidence of spills or

leaks from storage of used oil and or fuel oil in above ground tankage during the years 1969 to 1978.

9. In 1983 Woodward-Clyde Consultants performed a Site Investigation at the Quendall Terminals Site. This investigation consisted of 18 shallow borings, 11 monitoring wells, and 4 test trenches with a combined length of approximately 250 feet and an average depth of 8 feet. Soil and ground water was analyzed for polynuclear aromatic hydrocarbons (PAHs) and the volatile organics benzene, toluene, and xylene isomers (BTX).

10. In soil samples, total PAHs were found at concentrations exceeding 1% or 10,000 parts per million (ppm). The highest total PAH concentration was 4.8% or 48,000 ppm. Volatile organics in soil were detected at concentrations of up to 0.0058% or 58 ppm.

11. This field exploration program did not define the extent of soil contamination at the Site.

12. Ground water analyses confirms PAH and volatile organic contamination at the Site.

13. In 1988, Quendall Terminals entered into a Consent Decree to perform a Ground Water Quality Assessment. Eleven monitoring wells were installed at seven locations on the Site and monitored quarterly for one year. Analytical data was collected and presented without text in Appendix D: Soils Data Contaminant Testing and Appendix E: Ground Water Testing. No other appendices or accompanying report was presented for the Ground Water Quality Assessment.

14. In 1990, six additional wells were installed at four locations. Soil and groundwater samples were analyzed for volatile and semi-volatile organic compounds.

15. In 1990, the original Consent Decree was modified to include five Technical Memoranda to supplement the Ground Water Quality Assessment.

16. Technical Memorandum #1: Results of first and second Quarterly Ground Water Sampling and Analysis, was completed in January 1990. Ground water was analyzed for volatile organics, semivolatile organics, metals and conventional ground water constituents. Free product in the form of dense, non-aqueous phase liquids (DNAPLs) was encountered in four wells at three locations during sampling. Ground water at the site is contaminated with volatile organics and PAHs.

17. Technical Memorandum #2: Soils and Groundwater Analysis Results, was completed in 1991. Third and fourth quarter ground water sampling results re-confirmed volatile organics and PAH contamination along with the presence of DNAPL free product at three locations. PAH contamination in soils was also reported.

18. Technical Memorandum #3: Product Pumping Feasibility Investigation, was completed in 1992. Two wells containing up to six feet of DNAPL product were evaluated for product recovery.

19. Technical Memorandum #4: Results of Aquifer Testing, was completed in 1992. The objective of the aquifer testing was to estimate the shallow aquifer hydraulic properties of the upper water-bearing unit, including transmissivity, hydraulic conductivity, and storage coefficient.

20. Technical Memorandum #5: In-situ Biofeasibility Investigation, was completed in 1992. The objectives of the investigation was to measure chemical properties of ground water and soil pertinent to in-situ bioremediation and, evaluate the feasibility of conducting an in-situ bioremediation program, evaluate chemical pretreatment of ground water that

may be required, and identify factors that may influence the success of such a program.

21. Offshore sediment sampling was also conducted by the Environmental Protection Agency (EPA) in the vicinity of the dock and pipeline trestle (T-pier) in 1983. A large spill of either coal tar or creosote was reported to have occurred in the 1930's during transfer operations. It was reported that the heavier than water contaminants coated the lake bottom. The EPA study revealed high levels of PAH contamination in the offshore sediments.

22. The Department of Ecology, Environmental Investigations and Laboratory Services Program has performed three studies relative to offshore sediments at the Site:

- Distribution and Significance of Polycyclic Aromatic Hydrocarbons in Lake Washington Sediments Adjacent to Quendall Terminals/J. H. Baxter Site
May 1991
- Evaluation of Bioassay Organisms for Freshwater Sediment Toxicity Testing
February 1992
- Effects of Polycyclic Aromatic Hydrocarbons (PAHs) In Sediments From Lake Washington on Freshwater Bioassay Organisms and Benthic Macroinvertebrates
June 1992

23. An evaluation of the completion of preliminary site investigation work required for Quendall Terminals by Consent Decree No. 88-2-21600 is attached to this Order as Exhibit A.

III.

Ecology Determinations

1. Altino Properties, Inc. and J.H. Baxter & Co. are "owners" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

2. The facility is known as Quendall Terminals and is located at 4503 Lake Washington Boulevard in Renton, Washington along the southeast shore of Lake Washington. The facility includes the 25 acres described in Section II, Finding of Facts No. 1 and surrounding areas where hazardous substances have come to be located as a result of operations at the Site.

3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there has been a release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

5. By letters dated March 18, 1992, Ecology notified Altino Properties, Inc. and J. H. Baxter & Co. of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

7. Ecology has reviewed and approved all work performed by Quendall Terminals under Consent Decree No. 88-2-21600-2 as described in Exhibit A. Ecology has determined that all future work shall be done pursuant to this Order and such future orders and/or decrees as are required.

8. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Quendall Terminals take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Complete a Remedial Investigation Report for the upland portion of the Site that assembles and synthesizes the results of previous investigations and identifies and fills any data gaps. The Remedial Investigation will be conducted pursuant to WAC 173-340-350 and will develop sufficient information to characterize the Site and the contaminants and to determine the distribution of hazardous substances present at the Site.

2. Complete a Baseline Risk Assessment Report for the upland portion of the Site that characterizes the current and potential threats to public health and the environment posed by hazardous substances at the Site.

3. Complete a Feasibility Study for the upland portion of the Site pursuant to WAC 173-340-350 to develop and evaluate cleanup action alternatives for the environmental problems identified in the remedial investigation. The study will identify the estimated costs and effectiveness of each cleanup action.

4. The framework and schedule for completing the upland work to be performed is set forth in the Scope of Work, Quendall Terminals Upland Areas, Remedial Investigation/Feasibility Study, presented as Exhibit B to this Order, and known herein as "the plan". Exhibit B is an integral and enforceable part of this Order, and the work to be performed pursuant to such Exhibit is consistent with all requirements of state law and regulations. The

terms "Agreed Order" or "Order" shall include the Plan whenever used in this document. Except where performance by another party is expressly provided in the Plan, Quendall Terminals hereby commits to implement the requirements of the Plan.

5. The schedule for completion of the work will begin on the effective date of this Order. The effective date of this Order shall be the date of Ecology's signature following completion of the public comment process required for this Order.

6. The offshore/sediment portion of the Site will be investigated in a similar matter pursuant to the Sediment Management Standards. Negotiations for the scope of work and schedule for this work will begin no later than the completion date of the upland Remedial Investigation/Risk Assessment/Feasibility Study.

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in Ch. 70.105D RCW and Ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices. WAC 173-340-600(10)(c) requires a 30 day public comment period before this agreed order becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs. Quendall Terminals shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include

work performed by Ecology or its contractors at the Site under Ch. 70.105D RCW both prior to and subsequent to the issuance of this Order for investigations, remedial actions, Order preparation, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. Quendall Terminals shall pay the required amount within 120 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 120 days of receipt of an itemized statement of costs will result in interest charges at the rate of 12 percent per annum.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Mr. Brian S. Sato
Washington State Department of Ecology
3190 160th Avenue Southeast
Bellevue, Washington 98008-5452
(206) 649-7265

The project coordinator for Quendall Terminals is:

Mr. Scott W. Conklin
J. H. Baxter & Co.
1700 El Camino Real
P.O. Box 5902
San Mateo, California 94402-0902
(415) 349-0201

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Quendall Terminals, and all documents, including reports,

approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators with copies to the parties' attorneys.

Attorney for Altino Properties, Inc.:

Ms. Lynn T. Manolopoulos
Davis Wright Tremaine
1800 Bellevue Place
10500 Northeast 8th Street
Bellevue, Washington 98004-4300
(206) 646-6100

Attorney for Quendall Terminals:

Mr. James C. Hanken
Schwabe Williamson Ferguson & Burdell
Pacific First Centre, Suite 3400
1420 Fifth Avenue
Seattle, Washington 98101-1098
(206) 621-9168

Should Ecology or Quendall Terminals change project coordinator(s), written notification shall be provided to Ecology and Quendall Terminals at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Quendall Terminals shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Quendall Terminals shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Quendall Terminals shall not perform any remedial actions at the Quendall Terminals Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Quendall Terminals. By signing this Agreed Order, Quendall Terminals agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology will provide 24 hour notice before scheduled routine Site visits. Ecology shall allow split or replicate samples to be taken by Quendall Terminals and shall provide seven (7) days notice before any sampling activity. Quendall Terminals shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation. Quendall Terminals shall assist Ecology in preparing and/or updating a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Quendall Terminals shall help coordinate and implement public participation for the Site.

8. Retention of Records. Quendall Terminals shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in their possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Quendall Terminals, then Quendall Terminals agrees to include in its contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Quendall Terminals may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology's resolution of the dispute shall be binding and final. Quendall Terminals is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under Ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Quendall Terminals to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Quendall Terminals to require those remedial actions required by this Agreed Order, provided Quendall Terminals complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Quendall Terminals Site.

By entering into this Order, Quendall Terminals does not agree to perform any remedial actions not specifically required by this Order. Quendall Terminals does not admit to any liability for natural resources or other damages, nor does Quendall Terminals waive any defense regarding such damages.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Quendall Terminals to stop further implementation of this Order for such period of time as needed to abate the danger.

If Ecology orders Quendall Terminals to stop further implementation of this Order, Quendall Terminals is relieved of its obligations under this Order until Ecology authorizes Quendall Terminals to recommence implementation. The schedule for implementation shall be extended to reflect the period of time during which implementation of the Order was stopped.

11. Transference of Property. No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Quendall Terminals without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Quendall Terminals may have in the Site or any portions thereof, Quendall Terminals shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Quendall Terminals shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws. All actions carried out by Quendall Terminals pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements. Pursuant to WAC 173-303-800(7), Ecology exempts all activities under this Order from the requirement to obtain a final status dangerous waste treatment, storage, disposal permit under Chapter 70.105 RCW and Chapter 173-303 WAC.

13. Termination of Consent Decree. Contemporaneously herewith, the parties shall cause an Order to be entered in King County Cause No. 88-2-21600-2, Quendall Terminals Consent Decree, terminating said Consent Decree and all its amendments. The provisions of Consent Decree No. 88-2-21600-2 have been met and satisfied to the extent set forth in Exhibit A. All further action will be undertaken pursuant to this Agreed Order, or to such other orders and/or decrees as may be executed in the future.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Quendall Terminals' receipt of written notification from Ecology that Quendall Terminals have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

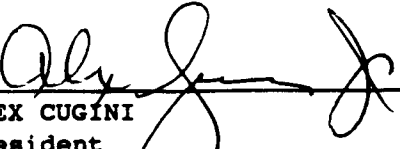
VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Quendall Terminals refuses, without sufficient cause, to comply with any term of this Order, Quendall Terminals will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
 - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: December 1, 1993

QUENDALL TERMINALS, a joint venture

BY 
ALEX CUGINI
President
Altino Properties, Inc.

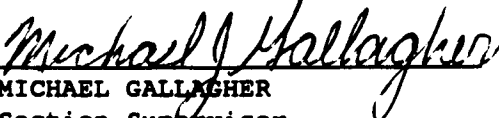
9/27/93
Date

AND

BY _____
NICHOLAS POLETIKA
President and Chief Executive Officer
J. H. Baxter & Co.

Date

DEPARTMENT OF ECOLOGY

BY 
MICHAEL GALLAGHER
Section Supervisor
Toxics Cleanup Program
Northwest Regional Office

12/1/93
Date

Effective date of this Order: December 1, 1993


QUENDALL TERMINALS, a joint venture

BY.

ALEX CUGINI
President
Altino Properties, Inc.

Date _____

AND

BY 
NICHOLAS POLETIKA
President and Chief Executive Officer
J. H. Baxter & Co.

9/10/93
Date

DEPARTMENT OF ECOLOGY

BY Michael J. Gallagher
MICHAEL GALLAGHER
Section Supervisor
Toxics Cleanup Program
Northwest Regional Office

12/1/93
Date

Effective date of this Order: December 1, 1993

QUENDALL TERMINALS, a joint venture

BY _____
ALEX CUGINI
President
Altino Properties, Inc.

Date

AND

BY _____
NICHOLAS POLETIKA
President and Chief Executive Officer
J. H. Baxter & Co.,

Date

DEPARTMENT OF ECOLOGY

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12/1/93
Date